HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 17955 of 1998

ORDER:

Aggrieved by an order, dated 11.11.1996, passed in I.D.No.219 of 1994 on the file of the Labour Court-III, Hyderabad, wherein an application filed by the respondent No.2 herein to set-aside the removal orders was allowed, the State Road Transport Corporation (for short "the corporation"), preferred the present writ petition.

The facts in issue are as under:

The second respondent herein who was working as a Conductor in the Corporation was removed from service on the ground that (1) he failed to observe the rule of completing the ticket issues within one fare stage; (2) failed to collect the fare and issue ticket to a passenger found alighting without ticket at Afzalgunj who boarded the bus at CBS Ex.Stages 4/3 to 3; (3) for having issued un-punched ticket Nos. 191/098493 to 497 of Rs.1.50 ps. denomination to a batch of three passengers (two full and one half) who boarded the bus at Moulali stage No.9 and bound for Afzalgunj stage No.3 found alighting and (4) opened the Rs.1.50 ps. denomination in the S.R. un-serially not legible with a motive to reissue the tickets. Challenging the said removal, the second respondent/employee preferred I.D.No.219 of 1994 before the Labour Court-III, Hyderabad. By an order, dated 11.11.1996, the said I.D. was allowed, setting aside the order of removal and directed the Corporation to reinstate the second respondent into service with continuity of service with all attendant benefits but with 20% of back wages. Aggrieved by the same the present writ petition is filed by the Corporation.

Learned counsel for the petitioner/Corporation submits that the serious charges are leveled and proved against the second respondent and as such he is not entitled for the reliefs claimed by him.

The short point that arises for consideration is whether the removal of the second respondent from service is justified?

During the course of trial in I.D.No.175 of 1994, though no oral evidence was adduced, 21 documents were marked on behalf of the Corporation. Neither oral nor documentary evidence was adduced on behalf of the second respondent/employee. The plea of the second respondent was that he could not follow the rule of issue and start because the bus was overloaded. According to him, the passengers covered by charge No.2 boarded the bus just prior to the Afzalgunj stating that he intended to go to Moulali. As regards the other charge, a lady passenger gave him Rs.10/- note and when he returned Rs.2.50 ps. the lady used some filthy and provocative language. Only from one passenger fare was not collected and ticket was not issued. With regard to punching of the tickets, he stated that as the bus was overloaded he could not punch the tickets. From the above, it is clear that there was only a technical violation but not with any malafide intention or fraudulent intention on the part of the second respondent/ employee.

It is not the case of the writ petitioner herein that the second respondent/employee was gainfully employed during the period of removal. In view of the above, the argument of the learned counsel for the petitioner that the second respondent/employee is not entitled for any back wages cannot be accepted, more so, in view of the judgment of the Apex Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and others*** wherein a three Bench judge of the Apex Court, after referring to all the judgments on the subject including the judgments of the Apex Court in ***J.K.Synthetics Ltd. V. K.P.Agrawal*** and ***Zilla Parishad, Gachiroli v. Prakash*** held as under:

i. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead

cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages.

The order in I.D. came to be passed in the month of November, 1996 and pursuant thereto the second respondent was reinstated into service. Having regard to the circumstances stated above and taking into consideration the facts and circumstances of the case, I see no grounds to interfere with the order under challenge.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

01.10.2015

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